



[6705-01-P]

FARM CREDIT ADMINISTRATION

12 CFR Part 610

RIN 3052-AC78

Registration of Mortgage Loan Originators

AGENCY: Farm Credit Administration.

ACTION: Interim rule with request for comments.

SUMMARY: The Farm Credit Administration (FCA, we or us) is repealing its regulations that govern the registration of residential mortgage loan originators employed by Farm Credit System (FCS or System) institutions. We are repealing these regulations because the Bureau of Consumer Financial Protection (CFPB), pursuant to its authority under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), is consolidating and recodifying the regulations that six Federal agencies jointly enacted to implement the Secure and Fair Enforcement for Mortgage Licensing Act (S.A.F.E. Act), which require residential mortgage loan originators at banks, savings associations, credit unions, FCS institutions, and their subsidiaries to register with the National Mortgage Licensing System and Registry (NMLSR or Registry) and obtain a unique identifier. Repealing these

regulations avoids duplication, which is likely to cause confusion at FCS institutions.

DATES: This interim rule will become effective 30 days after publication in the Federal Register during which either or both Houses of Congress are in session. We will publish notice of the effective date in the Federal Register. Please send your comments to us by [Insert date 30 days after date of publication].

ADDRESSES: We offer a variety of methods for you to submit your comments. For accuracy and efficiency, commenters are encouraged to submit comments by e-mail or through the FCA's Web site. As facsimiles (fax) are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act, we are no longer accepting comments submitted by fax. Regardless of the method you use, please do not submit your comment multiple times via different methods. You may submit comments by any of the following methods:

- E-mail: Send us an e-mail at reg-comm@fca.gov.
- FCA Web site: http://www.fca.gov. Select "Public Comments" and follow the directions for "Submitting a Comment."

- Federal eRulemaking Portal:
<http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Gary K. Van Meter, Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090.

You may review copies of comments we receive at our office in McLean, Virginia, or from our Web site at <http://www.fca.gov>. Once you are in the Web site, select "Public Commenters," then "Public Comments," and follow the directions for "Reading Submitted Public Comments." We will show your comments as submitted, but for technical reasons we may omit items such as logos and special characters. Identifying information that you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove e-mail addresses to help reduce Internet spam.

FOR FURTHER INFORMATION CONTACT:

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or

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SUPPLEMENTARY INFORMATION:

I. Background

On July 30, 2008, Congress enacted the S.A.F.E. Act¹, which mandated a nationwide system for licensing and/or registering all residential mortgage loan originators in the United States. The S.A.F.E. Act requires all residential mortgage loan originators at depository institutions, FCS institutions, and their federally regulated subsidiaries to: (1) Register with the NMLSR; (2) obtain a unique identifier; and (3) maintain their registration.² Originally, section 1507 of the S.A.F.E. Act required the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the former Office of Thrift Supervision, and the National Credit Union Administration (collectively the Federal banking agencies) and the FCA to jointly develop and maintain a system for registering residential mortgage loan originators at the institutions they supervise and regulate. The six agencies decided to

¹ The S.A.F.E. Act is title V of the Housing and Economic Recovery Act of 2008. Public Law 100-289, Division A, Title V, sections 1501-1517, 122 Stat. 264, 2810-2824 (July 30, 2008), codified at 12 U.S.C. 5101-5116.

² Separately, other provisions of the S.A.F.E. Act require every State to enact laws for licensing individuals who originate residential mortgages for State-regulated lenders. Residential mortgage loan originators who are licensed by one or more States must also register with the NMLSR, obtain a unique identifier, and maintain their licenses and registrations.

implement section 1507 of the S.A.F.E. Act through a joint rulemaking. The six agencies jointly published a proposed rule on June 9, 2009.³ A joint final rule was issued on July 28, 2010,⁴ and it became effective on October 1, 2010. However, actual registration with the NMLSR did not begin until the Registry became operational on January 31, 2011. The six agencies announced that the initial registration period for Federal registrations required by the S.A.F.E. Act and the final regulations would run from January 31, 2011, through July 29, 2011.⁵

Title X of the Dodd-Frank Act created the CFPB as the Federal agency that is primarily responsible for various Federal consumer financial protection laws.⁶ Since July 21, 2011, the CFPB has authority to prescribe rules or issue orders or guidelines pursuant to Federal consumer financial laws.⁷ The S.A.F.E. Act is an enumerated consumer financial

³ 74 FR 27386 (June 9, 2009).

⁴ 75 FR 44656 (July 28, 2009). The entire preamble to the final rule was reprinted at 75 FR 51623 (Aug. 23, 2010) because the footnotes in the preamble that was published on July 28, 2009 were not correctly numbered.

⁵ The agencies issued a joint press release on January 31, 2011, and they subsequently published the announcement in the Federal Register on 76 FR 6185 (Feb. 3, 2011).

⁶ Public Law 111-203, title X, 124 Stat. 1376, 1955-2113, (July 21, 2010).

⁷ Section 1061 of the Dodd-Frank Act transferred the "consumer financial protection functions" of the Federal banking agencies, the Department of Housing and Urban Development (HUD), and the Federal Trade

law under the Dodd-Frank Act⁸ and, therefore, the CFPB now has primary regulatory authority over it. Additionally, section 1100 of the Dodd-Frank Act amended section 1507 of the S.A.F.E. Act to transfer authority to develop and maintain the Registry from the FCA and the Federal banking agencies to the CFPB. As stated earlier, the FCA and the Federal banking agencies jointly enacted regulations to implement section 1507 of the S.A.F.E. Act.

Pursuant to its authorities under title X of the Dodd-Frank Act, the CFPB has consolidated and recodified the S.A.F.E. Act regulations of the FCA and the Federal banking agencies.⁹ The CFPB recently published an interim rule in the Federal Register.¹⁰ Instead of substantively amending

Commission to the CFPB. The "consumer financial protection functions" that transferred to the CFPB under section 1061(a)(1) of the Dodd-Frank Act include "all authority to prescribe rules or issues orders or guidelines pursuant to any Federal consumer financial law"

⁸ See section 1002(12)(N) of the Dodd-Frank Act, which classifies the S.A.F.E. Act as one of the "enumerated consumer laws," and section 1002(14), which includes these "enumerated consumer laws" within the definition of a "Federal consumer financial law."

⁹ The CFPB also has recodified the regulations that HUD promulgated under the S.A.F.E. Act to coordinate State compliance with the S.A.F.E. Act, and establish and maintain a licensing and registration system for residential mortgage loan originators in a State or territory that does not have one in place that meets the requirements of the S.A.F.E. Act.

¹⁰ See 76 FR 78483 (December 19, 2011). The interim rule became effective on December 30, 2011, and the comment period expired on February 17, 2012.

the current regulations, the CFPB has made only certain technical, formatting, and stylistic changes.¹¹

The CFPB consulted with the FCA and the Federal banking agencies when it drafted the interim rule. The CFPB has addressed all of the FCA's concerns, and it has gone to great lengths to ensure that the consolidated and recodified rule does not inadvertently conflict with provisions of the Farm Credit Act of 1971, as amended, and FCA regulations and other guidance that govern the lending authorities and corporate structure of FCS institutions. Additionally, the CFPB's interim rule does not impose any new substantive obligations on System institutions or their employees who are subject to the registration requirements of the S.A.F.E. Act.¹² As stated in the preamble to its interim rule, the CFPB considers employees of FCS associations who previously registered with the NMLSR and obtained unique identifiers in accordance the FCA's S.A.F.E. Act regulations to remain registered under its new regulations.¹³

Under these circumstances, the CFPB's consolidation and recodification of S.A.F.E. Act regulations causes no

¹¹ See 76 FR 78484 (December 19, 2011).

¹² Id.

¹³ Id.

concerns to the FCA. Three provisions in title X of the Dodd-Frank Act pertain to the FCA's rulemaking authority over the S.A.F.E Act,¹⁴ while section 1022 of the Dodd-Frank Act grants the CFPB primary rulemaking authority over consumer financial laws.

The FCA is repealing its S.A.F.E. Act regulations at 12 CFR part 610 in order to avoid confusion and unnecessary duplication. The CFPB's regulation at 12 CFR part 1007 will now govern the registration of residential mortgage loan originators at FCS institutions. To assist FCS institutions in locating part 1007, rescinded part 610 will retain its original heading and include a cross cite to the CFPB's rules governing the Federal registration of residential mortgage loan originators (Regulation G).

The FCA will continue to examine and enforce compliance by FCS institutions and their employees with the requirements of the S.A.F.E. Act and its implementing

¹⁴ Section 1027(k) of the Dodd-Frank Act states "No provision of this title [X] shall be construed as altering, amending, or affecting the authority of the Farm Credit Administration to adopt rules, initiate enforcement proceedings, or take any other action with respect to a [Farm Credit System institution]." (Emphasis added). Second, section 1100 of the Dodd-Frank Act retained the FCA's authority under section 1510 of the S.A.F.E. Act to "charge reasonable fees to cover the costs of maintaining and providing access to information from the Nationwide Mortgage Licensing System and Registry, to the extent that such fees are not charged to consumers for access to such system and registry." If the FCA were to assess such fees, it would do so only after a notice and comment rulemaking. Finally, the FCA, in contrast to the Federal banking agencies, is not a "transferor agency" under section 1061 of the Dodd-Frank Act.

regulations pursuant to its authorities under the Farm Credit Act of 1971 and sections 1024(f) and 1027(k) of the Dodd-Frank Act.

II. Administrative Procedure Act

The Administrative Procedure Act (APA)¹⁵ generally requires Federal agencies to give public notice that it is proposing to adopt, amend, or repeal a regulation, and then afford all interested parties an opportunity to comment before promulgating a final rule. However, a provision of the APA¹⁶ authorizes waiver of notice and comment rulemaking when an agency, for good cause, finds that notice and comment are impracticable, unnecessary, or contrary to the public interest.

The FCA finds good cause for waiving notice and comment in this situation. Section 1100 of the Dodd-Frank Act amended section 1507 of the S.A.F.E. Act by granting the CFPB authority to develop and maintain the Registry that the FCA and the Federal banking agencies previously exercised. Since the FCA and Federal banking agencies implemented the S.A.F.E. Act by jointly enacting regulations, the CFPB assumed responsibility for these regulations, by operation of law, on July 21, 2011. The

¹⁵ 5 U.S.C. 551 et seq.

¹⁶ 5 U.S.C. 553 (b).

CFPB is now exercising its new authority under title X of the Dodd-Frank Act by consolidating and recodifying the S.A.F.E. Act regulations of the FCA and the Federal banking agencies without substantive change. Under the circumstances, repeal of the FCA's regulations in part 610 conforms with title X of the Dodd-Frank Act. For these reasons, the FCA finds that notice and comment rulemaking procedures for the repeal of the FCA's regulations in part 610 are impractical, unnecessary, and contrary to the public interest because the CFPB, not the FCA, now has primary rulemaking authority over S.A.F.E. Act, which the CFPB is now exercising.

Although notice and comment rulemaking is not required in this situation, we invite your comments. We will respond to any comments we receive when we publish the final rule.

III. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the FCA certifies that the interim rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small

entities. Therefore, System institutions are not "small entities" as defined in the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 610

Banks, banking, Consumer protection, Loan programs - housing and community development, Mortgages, Reporting and recordkeeping requirements, Rural areas.

For the reasons stated in the preamble, part 610 of chapter VI, title 12 of the Code of Federal Regulations is revised to read as follows:

PART 610—REGISTRATION OF MORTGAGE LOAN ORIGINATORS

Authority: Secs. 1.5, 1.7, 1.9, 1.10, 1.11, 1.13, 2.2, 2.4, 2.12, 5.9, 5.17, 7.2, 7.6, 7.8 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2017, 2018, 2019, 2021, 2073, 2075, 2093, 2243, 2252, 2279a-2, 2279b, 2279c-10); and secs. 1501 et seq. of Pub. L. 110-289, 122 Stat. 2654.

§ 610.101 Cross reference.

The rules formerly at 12 CFR part 610 have been recodified by the Consumer Financial Protection Bureau at 12 CFR part 1007, "S.A.F.E. Mortgage Licensing Act—Federal Registration of Residential Mortgage Loan Originators (Regulation G)".

August 14, 2013.

Date: _____

Dale L. Aultman,

Secretary,
Farm Credit Administration Board.

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